HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3177 (S/S) year 2001

Mrs. Satyawati Margarat Willson

Versus

State of Uttaranchal and 3 others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 3.11.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No.3177(S/S) 2001

CIVIL SIDE:

Mr. Satyawati Margarat Willson., ….. Petitioner.

Versus

State of Uttaranchal & 3 others. ….. Respondents.

HON'BLE RAJESH TANDON- J:

Heard SriAnurag Bisaria, counsel for the petitioner and Mr. Beena Pande, counsel for respondents No.3 and 4.

By the present writ petition the petitioner has prayed for a writ, order or direction in the nature of mandamus commanding the respondents to provide the petitioner her retirement benefits and pension as she was retired on 08.07.1994.

The petitioner has stated that he performed her services with full satisfaction of the authorities during her service period and after reaching superannuation she has not been paid her retrial benefits.

The petitioner was informed on 8th July,1994 that with immediate effect she is being relieved. According to her date of birth, i.e. 22.06.1935, 30.06.1993 was the date of superannuation. At the time of the admission of the writ petition following order was passed on 21.06.2001 by his Lordship Hon'ble Mr. Justice P.C.Verma.

"Notices have been accepted by learned Chief Standing Counsel on behalf of respondent Nos.1 and 2 who prays for and is allowed three weeks time to file counter affidavit. Notices have also been accepted by learned standing counsel on behalf of respondent Nos. 3 and 4.

List after three weeks.

In the meantime it is provided that the provisional pension shall be paid to the petitioner forthwith".

The counsel for the petitioner has stated that in pursuance of the order dated 21st June,2001 the provisional pension was given to the petitioner for some time about 3- 4 months but thereafter no such provisional pension was paid to the petitioner.

As will appear from paragraph 9 of writ petition that the petitioner is continuously making the representation but till today the matter of the pension of the petitioner and other retrial benefits have not yet been finalized.

In paragraph 11 of the writ petition she has stated that she has completed all the formalities but the retrial benefits have not been released in her favour. Paragraph No. 11 of the writ petition is quoted below:

"That the petitioner completed all the formalities required from the respondents whatsoever but due to the departmental personal clarification no retrial benefits were provided to the petitioner and several times several things were required with the petitioner timed to time".

Further in paragraph 12 it has come on the record that when the petitioner was called she was offered 90% amount of the G.P.F. but the same has not been paid to her. Paragraph No.12 of the writ petition is quoted as under:

"That even after the great difficulties by having even no provisional pension the petitioner approached to the respondent No.1 on 27.3.2001 vide letter No.3677/2000-2001 the respondent No.1 again gave a proposal to the petitioner that she should have to furnish an affidavit that she has no objection to take 90% amount according to the calculation of the account slips or equal to the amount of pass book from 1984 till the retirement to produce in account slip. Thereafter the sanction of 90% GPF can be payable to sent the respondent No.3.".

Ms. Beena Pande has argued that since the petitioner has continued to work in excess of the age of superannuation, the difficulty,therefore, has come with the department to settle the pensionary benefits in favour of the petitioner.

The argument of the State counsel for the respondent Nos.3 and 4 can not be accepted in as much as the petitioner's period of date of superannuation was being 30th June, 1993. However, the petitioner has continued to work uptill 8th July,1994, i.e. the period of about 13 months in excess. There is no fault on the part of the petitioner as no notice for retirement was given to him, as such, the petitioner has continued to work even after 30th June,1993.

In my opinion it can not be a ground to deprive the petitioner from the retrial benefits. Depriving the petitioner to pay her the salary for the work done by her will amount 'BEGAR' and such an exploitation is prohibited under

Article 23 of the Constitution of India which reads as under:-

"Art.23 (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law".

As held by the Apex Court in 1995 (2) SCC 98 Collector of Madras and another Vs K. Rajamanickam which is quoted below:-

"The meat of the matter is that the respondent had attained superannuation on 31.01.1994 even on his own date of birth as contended for. As a fact, he was superannuated on 31.01.1993. By virtue of the orders of the Tribunal when contempt proceedings were threatened against the officers of the appellant, subject to their filing the appeal they reinstated the respondent into service on 07.02.1994 and he remained in office till the order was passwed by this court on 19.09.1994 suspending the order of the Tribunal, therefore, for seven months the respondent had continued in office. For the period for which he had continued, there shall be a direction not to recover any amount paid to him during that period. In other words, his retrial benefits should be computed as if he had retired on 31.01.1993 only"

It has been held in J.T. 1996(2) SC 236- S.V.Bhima Bhatta & another Vs State of Karnataka and others which is quoted as under:

"The payment of pension requires to be decided on the date on which the employee is required to retire and the residue period would be treated as fortuitous. We need not decide this question in view of the fact that this court, while issuing notice, has expressly limited to the question as to right of the State to recover the pension already paid to them. Shri Nagaraja has fairly stated that the State has no objection and the State would not recover the pension already paid to them, the notice is limited only to that extent. We hold that the State is not entitled to recover the pension already paid to them computing the pension as if the respondents retired at the age of 60 years. The larger question is left open since that is not the matter on which the notice was issued. Consequently, the lState is free to fix the pension according to rules.

In 1995 Suppelmentary (1) S.C.C. 18 Sahib Ram Vs State of Haryana and others the Hon'ble Apex Court has held as under:

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not be apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

In 1994(2) SCC 521 Shyam Babu K verma and others Vs. Union of India and others the Hon'ble Apex Court has held as under:

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330 – 480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1,1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330- 560 but as they have received the scale of Rs.330- 560since 1973 due to not fault of theirs and that scale is being reduced in the year 1984 with effect from January 1,1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondent, the petitioners being in no way responsible for the same."

The petitioner has also referred the judgment of Ram Khelawan Pathak Vs State of U.P. and others reported in 1998(3) UPLBEC 1954 wherein it has been held that when employee has worked beyond the period of his retirement the residuary period should be treated as fortuitous. His Lordship has relied upon the judgment of Apex Court in S.V.Bhima Bhatta & another Vs State of Karnataka and others reported in JT 1996(2)S.C. 236. The observations in the judgment of Ram Khelawan Pathak (supra) is quoted below:

"In a case where an employee has worked beyond the period of his retirement the residue period should be treated as fortuitous as has been held by Hon'ble Supreme court in Judgment Today 1996 (2) S.C. 236, S.V.Bhima Bhatta

and antoher Vs State of Karnataka and others. The matter also came to be considered in another case reported in Judgment Today 1997 (1) SC 353, Mahmood Hasan and others Vs State of U.P. and others, where the employees were reverted to a lower post as their promotion was against rule, it was held that those who will have to step down on a count of correctional process need not refund the pecuniary or other benefits enjoyed by them for they had actually worked during that period. There is yet another direct authority on the point reported in 1994(2) SCC 621,Shyam Babu Varma and others Vs Union of India

and others. In which the Apex court dealing with the similar situation, ruled that since the petitioner received higher pay scale not due to fault or his own, it shall not be just and proper to recover the salary already paid to him. A Division klBench of this court had the occasion to deal with the similar controversy in 1996(3) U.P.L.B.E.C. 1840, Harish Chandra Srivastava Vs State of U.P. and others. In that case also, an order was passed without giving an opportunity to withhold superannuation benefits to the petitioner, who was wrongly promoted and was paid the higher salary. It was observed that the impugned order was liable to be quashed not only on the ground of want to affording reasonable opportunity of being heard to the petitioner but also on the ground that the petitioner cannot be held responsible for securing promotion on the higher scale of pay by misrepresenting the department and, therefore, payment of salary cannot be recovered."

Relying upon the decisions of Apex Court in Deoki Nandan Prasad Vs State of Bihar, AIR 1971 S.C 1409, Madan Mohan Pathak Vs Union of India, AIR 1978 S.C. 803, State of M.P. Vs. Shardul Singh, 1970(1) S.C.C. 108, Poonamal Vs Union of *India, AIR 1985 S.C. 1196, D.S. Nakara Vs Union of I*ndia, AIR 1983 S.C. 130, Salabuddin Mohammad Yunus Vs State of U.P. , A.I.R. 1984 S.C. 1905, State of U.P. Vs. Brahm Datt Sharma, AIR 1987 S.C. 943 it has been held in Shushila Bhatnagar Vs State of U.P., 1998(3) U.P. LBEC 2214 the retirement benefits are not a bounty payable on the sweet will and pleasure of the Government but it is a right of the person to receive it under Article 31(1) of the Constitution of India as well as it is a property covered under Article 19(1)(f) of the Constitution of India. The observations are quoted below:-

" Retirement benefits is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant. The right of the person to receive pension is property under Article 31(1) and by a mere executive order the State had no power to with-hold the same. Similarly the said claim is also property under Article 19(1)(f) and it is not saved by sub article (5) of Article 19. Therefore, denial of right to receive pension affects the fundamental right of the person under Article 19(1)(f) and 31(1) of the Constitution. It was so held in the case of Deokinandan Prasad Vs State of Bihar, AIR 1971 SC 1409. In the case of Madan Mohan Pathak Vs Union of India, AIR 1978 SKC 803, the Apex Court had held that property in Articles 19, 31(1) and 31 (2) must have the same connotation and since these are constitutional provisions intended to secure a fundamental right they must receive the widest interpretation and must be held to refer to property of every kind. Property within the meaning of Articles 19(1) (f) and 31(2) comprises every form of property, tangible or intangible. Including debts and choses-in-action such as unpaid accumulation of wages, pension and cash grants. Grant of payment of retirement benefits are part of the conditions of service which has been so interpreted in the case of State of M.P. Vs. Shardul Singh, 1970(1) LSKCC 108. That the expression 'conditions of service' is an expression of wide import. It means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc. In the case of Ponnamal Vs Union of India, lair 1985 SKC 1196, it was observed by the Apex Court that pension is not merely a statutory right. It is the fulfillment of a constitutional promise in as much as it partakes the character of pubic assistance in case of unemployment, old age, disablement or similar other cases of undeserved want. Relevant Rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and any one entitled to the pension under the rules can claim it as a mater of right. In the case of D.S. Nakara Vs Union of India, AIR 1983 SKC 130; 1983 UPLBEC 378 (SC), the Apex Court had laid down that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment. It is a payment for the past servixce rendered. It is a social welfare measure rendering socio-economic justice to those

who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch .Pension as a retirement benefit is in consonance with an furtherance of the goals of the Constitution. The most practical raison denter for pension is the inability to provide for oneself due toold age. It creates a vested right and is governed by the Statutory rules. In the case of Salabuddin Mohd. Yunus Vs State of A.P., AIR 1984 SC 1905, it was held that right to receive pension is a fundamental right which can be curtailed only in the manner provided in the Constitution. It was further held that pension is property within the meaning of Article 31(1) of the Constitution and that it is also a right under Article 19(1)(f) which could not be restricted even as provided under clause (5) of Article 19 and that clause has no application to the right to receive pension. Pension is not a bounty but a right earned by a Government servant on the basis of length of service, is also so recognized in the case of State of U.P. Vs Brahm klDatt Sharma, AIR 1987 SC 943".

The petitioner was allowed to work even after the age of superannuation, no fault can be found and the petitioner is entitled for his remunerations for the period which he has worked.

It is well known maxim that law does not compel a man to do that which he can not possibly can do as held in JT 1996 (2) oage 670, Attiq-Ur-Rehman Vs Municipal Corporation of Delhi and another.

The respondents, therefore, are directed to pay the petitioner retiral benefits and pension available to him. So far as excess payment is concerned, no doubt, the petitioner has worked after the date of superannuation but never-the-less the petitioner has worked for that period continuously and the petitioner can not be at fault as no such notice was given to the petitioner and he was allowed to work regularly.

Admittedly the petitioner had retired on 30.06.1993. The petition is pending since 21.06.2001, the retirement benefits ought to have been paid immediately on the date of retirement as held by the Apex Court aforesaid.

The respondent Nos.3 and 4 are directed to pay the retiral benefits and pension to the petitioner alongwith the interest @ 6%. The respondents are directed to release the retiral benefits as well as the pension in favour of petitioner within a period of six weeks from the date of production of certified copy of the order to the authorities concerned.

In view of the aforesaid facts and circumstances the writ petition succeeds and is allowed.

The writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

Dated: 3.11.2003
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